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THE POWERS OF THE COMMANDER OF THE CONFEDERATE TRANS-MISSISSIPPI DEPARTMENT,  
1863-1865

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1. *The Organization of the Trans-Mississippi Department*

During the last two years of the war of secession, the situation in that part of the Confederacy which lay west of the Mississippi was without a parallel in the history of modern warfare. A vast territory, thinly populated, undeveloped, practically without railroads, cut off from its principal source of military supplies, having but precarious and infrequent communication with the general government to which it must look for direction in the desperate struggle for independence, it was thrust back upon its own resources and forced to acquiesce in a governmental arrangement of an unusual design. By common consent, under pressure of necessity, a military chieftain assumed the functions, in large part, of the president and cabinet and attempted to carry on the government under constitutional forms without resort to martial law. The conditions which brought about this extraordinary situation, the problems which beset the head of this government, the functions which he assumed and exercised, and the relations which he sustained to the local civil governments and to the distant and all but inaccessible government at Richmond, constitute an important but hitherto neglected part of the history of the Confederacy.

Though the Confederate government was organized quickly, it was hardly in operation before the war was in actual progress. Among the many questions which pressed upon the Executive and Congress was that of the organization of military departments. At first the territory west of the Mississippi was divided into several departments; then it became a district, the Trans-Mississippi, of the Western Department.<sup>1</sup> This district was too large

<sup>1</sup>*Official Records, War of Rebellion*, Series I, Vol. VII, 826. Hereafter in this paper these Records will be referred to as *Off. Recs.*, and when Series I is cited, no series number will be indicated. The volumes will be referred to in large Roman, the parts in small Roman, and the pages in Arabic.

for effective administration, however, and in May 1862, it was erected into the Trans-Mississippi Department, which was composed of the districts of Arkansas and Texas. The Arkansas district, which included Arkansas, Missouri, and that part of Louisiana lying north of the Red River, was placed under the command of Major General T. C. Hindman; while the Texas district, consisting of Texas and the remainder of Louisiana west of the Mississippi River, was assigned to Major General P. O. Hébert.<sup>2</sup> There was strong objection in Louisiana to this arrangement since it divided the state between two districts and gave it adequate protection in neither. The protests which were made to the President by state officials<sup>3</sup> and the steady advance of the Federals on the Mississippi probably led to the next change. In July Major General T. H. Holmes was sent to command the Trans-Mississippi Department. He made Louisiana a separate district and assigned Major General Richard Taylor to command it. The Indian Territory was added to the Arkansas District and Arizona and New Mexico to that of Texas.<sup>4</sup>

During the first two years of the war, Galveston and minor posts in Texas had been captured and retaken; New Orleans and much of the coast country in Louisiana had been seized; Missouri had been overrun; and the Confederate forces in Arkansas had lost control of the Mississippi and had been driven south of the White River. The greater part of this department had been untouched by invasion, but the continued advance of the Federals on the Mississippi threatened the separation of the west from the east. These disasters aroused the people everywhere. In the west especially the feeling became intense. Soon after the fall of New Orleans, leading men began to urge the officials at Richmond to make arrangements by which this department could be maintained and protected if the river should be lost. Guy M. Bryan of Texas, May 2, 1862, urged upon the congressmen from his state that the government send representatives of the war and treasury departments west of the Mississippi. Governor Moore of Louisiana, two days later, telegraphed the President that if the

<sup>2</sup>General Orders No. 39, War. Dept., May 26, 1862, *Off. Recs.*, IX, 713; General Orders No. 1, [Hébert] June 18, 1862, *ibid.*, 719.

<sup>3</sup>Moore to Randolph, July 25, 1862, *Off. Recs.*, LIII, 819.

<sup>4</sup>General Orders No. 5, August 20, 1862, *ibid.*, IX, 731.

river should be lost the military operations west of the Mississippi would have to be independent of those east of it and that the general in the west must be invested with plenary powers.<sup>5</sup> In some parishes and counties of Louisiana and Arkansas a condition little short of anarchy prevailed. By the fall of 1862, some parts of both Texas and Arkansas had been illegally placed under martial law. The organization of the department was loose and ineffective. The Arkansas delegation in Congress sent a memorial to the President asking that abuses in that state be corrected and that General E. Kirby Smith be sent to command the Trans-Mississippi Department. One after another these reports piled up evidence of the demoralization in these states. Actuated by these demands, by apprehensions of the loss of the river, and by the necessity of strengthening the military organization of the department, the President, February 9, 1863, gave orders for the unification of the department and assigned E. Kirby Smith to its command.<sup>6</sup>

General Smith assumed command of the department, March 7, 1863, and after a short time, made Shreveport, Louisiana, his headquarters. For a time he continued the districts as they had been organized—Major General Richard Taylor in command of Louisiana, Major General Magruder in Texas, and Major General Holmes in command of the district of Arkansas.<sup>7</sup> A vigorous policy was attempted. Strenuous efforts were made to change raw troops into an efficient army, to consolidate or distribute the means

<sup>5</sup>*Off. Recs.*, LIII, 804, 805.

<sup>6</sup>General Orders No. 1, March 7, 1863, *Off. Recs.*, XXII, ii, 798. See also Davis to Holmes, February 26, 1862, *idem*, LIII, 849-850, and Davis to Garland, March 28, *ibid.*, 861-863.

Edmund Kirby Smith, a native of Florida, was educated at West Point and in 1845, was assigned to the infantry. He fought under General Scott in the Mexican War and was promoted to the rank of First Lieutenant, then to that of Captain. After the war he taught mathematics at West Point till 1852, when he was sent against the Indians on the Texas frontier. When Florida seceded, he resigned his commission in the United States army and entered the Confederate service as lieutenant-colonel. During the first two years of the war, he was promoted step by step to the rank of lieutenant general, and in 1864, he attained the rank of general. During the last two years of the war his life was closely interwoven with the history of the Trans-Mississippi. At his death in 1893 he was professor of mathematics in the University of the South, at Sewanee, Tennessee.

<sup>7</sup>Major General Magruder had succeeded Major General Hébert in the fall of 1862. *Off. Recs.*, XV, 826, 880; XXIII, ii, 803.

at hand for the best results to the service, to instill confidence into the troops, to secure the support of the people, and to initiate a policy that would make the department self-sustaining.<sup>8</sup>

The government, busy with its organization, its many perplexing problems, and the fiercer struggle raging nearer Richmond, had failed to provide for this remote department. When at last, in the spring of 1863, it realized the disastrous consequences of this short-sighted policy and attempted to avoid the embarrassments which the previous neglect had already brought about, it was really too late, for the commanding general was never able to overcome the handicap nor to avoid the injuries which resulted from this earlier inattention to the affairs of the Trans-Mississippi region.

2. *The Commander and the State Authorities; the Marshall Conference.*

General Smith early realized that the isolation of his department and the unusual responsibilities which devolved upon him would force him to assume functions not ordinarily exercised by military officers under a constitutional government. Shortly after the fall of Vicksburg he wrote to the war office at Richmond:

"Without the assumption of extraordinary powers, my usefulness as department commander will be lost. If possible, instructions and orders to meet this emergency should be sent by special messengers. . . . I feel I shall now be compelled to assume great responsibilities, and exercise powers with which I am not legally invested. . . . I entreat him [the President] to send heads of departments west of the Mississippi, with extraordinary powers for the organization of a government."<sup>9</sup>

<sup>8</sup>Seddon to Davis (annual report) November 26, 1863, *Off. Recs.*, Series IV, Vol. II, 1016.

The Trans-Mississippi Department included an area of approximately 735,000 square miles. Its population, exclusive of Indians, was, in 1860, about 2,728,870. The white male population of military age, from 18 to 45 inclusive, was, exclusive of those in the territories, approximately 500. (This area is computed from Redway and Hindman's *Natural Geography*. The population is taken from the *United States Census Report for 1860*, but the division of the state of Louisiana and the failure of some counties to report the census at that time make it impossible to get very accurate figures.)

<sup>9</sup>Smith to Cooper, July 28, 1863. *Off. Recs.*, XXII, ii, 949.

Despite these and other urgent messages, the Federals were in full control of the Mississippi before any response came from Richmond. By this time the people in the west were in the depths of despondency and mutterings against the government were heard from disaffected spirits. There were rumors that the states of this department would secede from the Confederacy. General Smith, realizing the danger in this crisis and fearing that this spirit of despondency and hopelessness might lead to measures harmful to the department and to the Confederacy, had sent a circular letter, July 13, to the governors of the four states of his department asking them, with the judges of their Supreme Courts, to meet him in a conference at Marshall, Texas, August 15, 1863. His purpose, as he stated it, was to acknowledge the civil government supreme over the military; to invoke the power of the states to aid him; to try to make the people feel that a government remained to them capable of administering to their wants and necessities; and to secure the confidence, advice, support, and co-operation of the leading spirits and judicial minds of his department.<sup>10</sup>

Before time for the conference to assemble, the commanding general's position was greatly strengthened by suggestions from Richmond that he follow the very policy he had already entered upon. On almost the same day that General Smith had sent out his invitations to the conference, the President wrote advising him to explain so much of his plans to the governors as would prevent them from misconstruing his actions, and to confer with them, thus making them "valuable coadjutors without surrendering any portion of the control necessary for a commander to retain." Secretary Seddon also recommended, July 14, that he call to his aid the ablest and most influential men of the country, and that he establish a civil and a military government for the department.<sup>11</sup>

In answer to the commander's call, a group of prominent men gathered in Marshall, August 15, 1863. From Arkansas, came Robert W. Johnson, who represented Governor Flanagin, C. B. Mitchell, and W. K. Patterson; from Louisiana were Governor Thos. O. Moore, Colonel T. C. Manning, W. Merrick, and Albert

<sup>10</sup>*Off. Recs.*, XXII, ii, 935-936.

<sup>11</sup>*Off. Recs.*, XXII, ii, 926, 1004.

Voorhies; from Missouri, Governor Thomas C. Reynolds; from Texas, Governor F. R. Lubbock, W. S. Oldham, Colonel Pendleton Murrah, and Guy M. Bryan. These were all men of ability who possessed the confidence of the people of their respective states; and there is no doubt but that their recommendations had great weight with the authorities at Richmond in determining the best means of administering this detached department.

At this first meeting, General Smith submitted the recent letter from the Secretary of War and asked the conference to consider the following questions:

"1st. The condition of the states since the fall of Vicksburg; the temper of the people; the resources and ability of each state to contribute to the cause and defense of the department, and the best means of bringing into use the whole population for the protection of their homes.

"2d. The best means for restoring confidence, checking the spirit of disloyalty, and keeping the people steadfast, in the hope of the ultimate triumph of our arms.

"3d. The question of the currency, and the best method of securing the cotton of this department without causing opposition on the part of the people, and the best method of disposing of the same.

"4th. The extent of the civil authority to be exercised, referred to in the letter of the Secretary of War, July 14.

"5th. Appointment of commissioners to confer with French and Mexican authorities in Mexico.

"6th. Arms and ordnance stores."<sup>12</sup>

The conference was organized for business August 17, with Governor Francis R. Lubbock as chairman and W. K. Patterson as secretary. Committees were appointed to consider the questions submitted by the commanding general. The next morning the conference assembled to hear the reports of its committees. Judge Merrick made the report for the committee which had under consideration the extent of civil power to be exercised by the commanding general. The report, which was unanimously adopted, recommended that only such powers should be exercised by the commanding general as were then exercised by executive officers

<sup>12</sup>The above and all reports of the conference are found in *Off. Recs.*, XXII, ii. 1004-1009.

at Richmond, for, on account of his inability to communicate with Richmond, these were absolutely necessary in order for him to augment his army and put the department in the best state of defense; that such powers, which had not been granted by act of Congress to any general in the army, were only powers of administration, and should be exercised according to existing laws; that nothing should be changed except the agents by which the operations of the government in this department are carried on. Extreme caution on the part of the committee is shown by reference to the fact that no act of Congress authorized such assumption of power and that the state governments still existed and had officers capable of exercising all power inherent in such local units. The members of the committee made no effort to define specifically what functions were to be assumed, but they were careful to assert that the civil power was superior to the military.

The second report was from the committee to which had been referred the following subjects: the best means of restoring confidence and of checking disloyalty; the condition of the states, the temper of the people, and the ability of each state to contribute to the defense of the department; plans for bringing the entire population of military age into service; and measures to secure arms and ordnance. Underlying the solution of these questions was that of the military administration of the department. The report, which was adopted, declared that the mass of the people were still loyal to the cause of the Confederacy and had full confidence in the ability and integrity of the commanding general; it included a tabulated statement of the resources of the several states; and it showed that the supply of arms and ammunition received from the general government had not at any time been adequate, that now the loss of the Mississippi and the blockade of the Gulf coast had cut off the hope of receiving even a meager supply from that source and had thrown the department entirely on its own resources.

"Beleaguered as we are by the enemy," the report continued, "the commanding general can neither transmit reports nor receive orders from the capital. Hence the safety of our people requires that he assume at once and exercise the discretion, power, and prerogatives of the President of the Confederate States and his



subordinates in reference to all matters involving the defense of his department. The isolated condition and imminent peril of this department demand this policy, and will not permit delay; and we believe that all may be done without violating the spirit of the constitution and laws of the Confederate States, and without assuming dictatorial powers."

It was thus agreed that the general should assume war powers in this department, for the right to exercise the discretion, power, and prerogatives of the President and his subordinates in the defense of a department in imminent peril could hardly be less than war powers.

The report of the committee on the appointment of commissioners to confer with the French and Mexican authorities in Mexico was presented by Mr. Murrah. This report, which was also unanimously adopted, declared in substance that an understanding between the Confederacy and the different authorities in Mexico was very essential, partly because of the hostile relations between those French and Mexican authorities, but chiefly because of the entire dependence of the Trans-Mississippi Department on the ports of Mexico for supplies and for communication abroad. Such an understanding, it was stated, could best be reached by correspondence, which in the present state of affairs could not be conducted effectively through the Richmond offices; and as the correspondence would pertain strictly to the interests and immediate needs of this department, "the law, whenever the law speaks, and propriety, where the law is silent, points out the military commander of the department as the proper official" to conduct it. It was also suggested that an agent, intelligent, well-informed, one adapted to inspire confidence by his knowledge and discretion and not likely to be misled by flattery, be appointed and sent to Mexico. This agent, though perhaps not recognized by any rank or title, should have authority to find out the attitude of both governments toward the Confederacy, to see what arrangements each would make with regard to trade, to make explanations, to represent this department in matters of reciprocal interests to both parties, and to adjust differences concerning imports consigned to this department.

This is the first reference to and, as far as is known, the only authority for the assumption of this diplomatic or quasi-diplo-

matic function by the commanding general. Of course these state officials had no constitutional authority to confer such power on any person; and it seems that no recognition of it was ever made by Confederate officials. However, negotiations through Richmond would be impracticable; and the situation in the department required a representative who understood not only the vital needs of the department but also border and trade conditions and who could report to and receive instructions from the head of the department.

Since money is the barometer not only of issues but of nations, it was appropriate that the report dealing with currency and the best means of securing the cotton of the department, be made very exhaustive. Senator W. S. Oldham, chairman of the committee, read the report which is summarized briefly here. It stated that cotton was the only safe and reliable means of supporting and defending the department; that the impressment acts gave authority for the use of cotton for military necessity; but, since it was impossible to secure treasury notes to buy the cotton and since to pay for it with them would increase the number of such notes in circulation and thereby tend to depreciate the currency still more, the committee proposed:

"That certificates be executed and delivered to the owners of the cotton purchased, pledging the Government for the payment of the price agreed upon in 6 per cent coupon bonds, the interest to be paid semi-annually from the date of the certificate in specie. . . ."

The interest for the first two years was to be paid from the proceeds of the cotton, but after that time it was expected that the government would pay it. General Smith was advised to take charge of all cotton in the department, except such as he should decide would be needed for the welfare of the people. This, it was believed, would take the cotton trade out of the hands of speculators and thereby prevent the further accumulation and therefore the further depreciation of the Confederate notes in the department. As to the currency, it was suggested that, since money could not be obtained from Richmond, the commander, in the exercise of the special powers conferred upon him by the President, cause the Confederate notes not bearing interest, which had been funded with the various depositories within the depart-

ment, to be re-issued and used for the support of the army. It was considered that the government would accept these notes for bonds of the same rate of interest as the new issue. This report was unanimously adopted except the clause which recommended the issuance of the specie payment coupon bonds. On this the vote was a tie, but the records do not indicate who opposed it.

After all reports had been made, a resolution was passed voicing the confidence of the members of the conference in the skill, ability, and personal integrity of General Smith and of his regard for law. The general then expressed his gratification for the work accomplished, and the conference adjourned.

For the double purpose of stimulating popular zeal and of recognizing and endorsing the commanding general and his work, the four governors, R. W. Johnson acting for Governor Flanagin again, prepared and published an address to the people of the department. Its bombastic tone and the fact that the measures of the conference were so artfully and completely omitted indicate the terrible tension of the people and the serious apprehensions of these men for the success of the plans they had devised.

From a legal point of view, the work of the conference had no constitutional sanction whatever, but at the time, the commanding general, the President, and the secretary of war, as well as the state officials, considered it necessary and wise. If the people opposed it, the few newspapers available give no evidence of criticism. Its measures seem to have been accepted generally, and there can be little doubt of its salutary effect in the department. The authorities of the four states had not only compared resources and come to realize fully their great needs; but they had given to the commander of the department, who alone was able to assume the general direction of affairs, a moral support without which his every effort would have been futile.

### *3. Powers Delegated by the Confederate Executive*

The Richmond officials appreciated at once the difficulties of both civil and military administration which the fall of Vicksburg and Port Hudson had placed upon the conduct of the government west of the great river. Two weeks before General Smith had sought from them official sanction for his plans or instructions as to what other course he should pursue, both the President

and the Secretary of War, as we have already seen, had written him on the same subject. The President's letter touched on every phase of the military service in the department—the probability of invasion by the enemy, the operations that would be most possible, the agricultural resources, the mineral wealth, and the efforts that had been made to establish factories and mills in the department,—but in no way did he intimate that the commander should extend his authority over civil affairs and he referred to the anomalous conditions west of the Mississippi only in general terms: "By the fall of our two fortified places on the Mississippi . . ., your department is placed in a new relation, and your difficulties must be materially enhanced. You now have not merely a military, but also a political problem involved in your command."<sup>13</sup>

Secretary Seddon's letter of the same date has not been preserved, but from references to it, its tenor is easily inferred. The general was told that he would have to assume large military powers, "to exercise powers of civil administration," and that he would have to form a civil and military government. It seems, however, that Seddon gave no definite instructions and merely suggested that the military administration be carried on by means of bureaus corresponding to those of the war department in Richmond. It was this letter, later referred to by Seddon as unofficial, which Smith had laid before his conferees at Marshall on August 15. Shortly afterwards, August 3, and before Smith's letter of July 28th could have been received, the secretary wrote that it would be impossible to give special instructions at such a distance, and that what measures should be adopted must be left largely to the commander's discretion, but suggested that Smith put himself in touch with the governors of the Trans-Mississippi states in order to maintain a cordial understanding and co-operation in carrying out his plans, and that he further seek the advice and influence of leading citizens throughout his department—the very things that Smith had already undertaken to do.<sup>14</sup>

The advice of Davis and Seddon lacked much in definiteness

<sup>13</sup>*Off. Recs.*, XXII, ii, 925-927.

Although the context is not clear, it is probable that Davis had in mind chiefly the necessity of removing the causes of dissatisfaction in Arkansas and of composing possible state jealousies.

<sup>14</sup>Seddon to Smith, August 3, 1863. *Off. Recs.*, XXII, ii, 952-953.

with respect to the most delicate problems which confronted General Smith. But they must have found it difficult to know what to say. This vast Trans-Mississippi department, comprising practically half of the country, was cut off from its government and its chief source of military supplies. It was impossible for the civil officers of the general government at Richmond to continue to direct affairs in that remote region; but there seemed to be no constitutional way by which important political functions could be entrusted to a military officer, even though the logic of the situation required that he who was responsible for the well being of the department should have all powers necessary to maintain and defend it. Moreover, Congress was not in session, and there was no way of determining to what extent that body would support the delegation of special civil powers to a military chieftain. To do all that the situation seemed to demand even with the support or the express authority of Congress, might easily arouse anew the opposition of that troublesome faction who insisted upon a strict adherence to the constitution regardless of other considerations. The consequences were problematical, especially since there was believed to be an element in the Trans-Mississippi Department which was clamorous for separation from the Confederacy.<sup>15</sup> It was probably considered unwise either to bind General Smith with precise instructions or to confer upon him unreservedly authority over civil affairs—if, in fact, so much thought was given the matter. If his powers were vaguely defined there was less likelihood that he would be charged with exceeding them. If he was to fulfill the expectations of the government in making it self-sustaining, it would be impossible to confine his powers within the narrow limits of the law. It is said that the President once told General Smith's aide, Major Cucullu, whom the general had sent to him for instructions, that he did not dare to put on paper the powers which the general must exercise, because they were so great.<sup>16</sup> This statement, if accurate, indicates that Davis, who always sought to avoid the appearance of departing from constitutional methods, was inclined to wink at the assumption of powers which he was unwilling expressly to authorize Smith to assume.

<sup>15</sup>Davis to Johnson, July 14, 1863. *Off. Recs.*, LIII, 879.

<sup>16</sup>Major Cucullu made this statement to Dr. Chas. W. Ramsdell of the University of Texas in December, 1913, in New Orleans.

The documentary evidence points in the other direction. When the general's letter of July 28, requesting approval of his assumption of extraordinary powers, was laid before the President, Mr. Davis endorsed upon it: ". . . My confidence in the discretion and ability of General Smith assures me that I shall have no difficulty in sustaining any assumption which may be necessary. Able heads of departments should be selected and large discretion allowed." But this concession, as is evident from the letter of Seddon which conveyed it to Smith, referred not to other cabinet departments, but only to bureaus within the war department.<sup>17</sup> If after this, any hope lingered in the mind of General Smith that the President would expressly confer upon him authority over the subordinates of the executive departments other than that of war, it must have been dispelled by the explicit declaration in a later communication from Seddon that his previous suggestion that Smith should "exercise powers of civil administration . . . only meant such matters of an administrative character as were naturally promotive of or connected with military operations and appropriately pertained to the executive functions of the Confederate Executive. . . . What I had particularly in mind were the various administrative branches of service that minister to the supply, equipment, and furnishing of arms in all their branches of service . . . [These would be] analogous to our bureaus" [in Richmond].<sup>18</sup>

As a matter of fact, Smith had anticipated the suggestions of his superiors with respect to these bureaus. By a series of orders

<sup>17</sup>Seddon's language was: "Heads to any of the branches of service which are needed from here will be sent with large powers as you suggest; but I would recommend as a mode of adding to your influence and avoiding dissatisfaction and jealousy, that as far as you have competent persons in your department, you engage and recommend such for confirmation by the department. . . . I shall await your specific recommendations. . . . of such officers as are specially needed." August 30, 1863. *Off. Recs.*, LIII, 895.

<sup>18</sup>Seddon to Smith, October 10, 1863. *Off. Recs.*, XXII, ii, 1039.

Seddon added by way of illustration: "Now, the main offices of our bureaus may be executed effectively by assigning or placing at the head of each an existing military officer or agent already appointed for your department by one of the bureaus here. A chief commissary may discharge the duties, with the aid of appropriate subordinates, of the Bureau of Subsistence. A leading quartermaster, a competent adjutant, a chief of ordnance, the agent appointed by the Niter and Mining Bureau for your department may each, with appropriate assisting officers, discharge the duties of the corresponding bureaus here." *Ibid.*

during August and September, he had established commissary, quartermaster's, ordnance, and medical bureaus at or near his headquarters and had placed over them officers from his staff. All subordinates who under ordinary circumstances would make reports and returns to the heads of these bureaus at Richmond were directed to make reports to these new bureau heads.<sup>19</sup> He had even gone further by the creation of a "cotton bureau," which had never been authorized anywhere, either by act of Congress or by order of the President.<sup>20</sup> He had also asked that the appointing power be delegated to him, subject to the approval of the President, until communication should be reopened with Richmond. He especially desired authority to issue invitations to appear before medical boards, to appoint staff officers of new organizations, to accept resignations, and to fill all vacancies. In this, however, he was trenching upon a constitutional prerogative which Davis cherished with jealous care. The President endorsed upon the request: "The power to appoint cannot be delegated. The Constitution confers it upon the President only, by and with the consent of the Senate. Promotions, elections, examinations may occur and be acted on for the time, officers may be assigned to staff duty, and thus the difficulty, recognized to the full extent described, may be practically removed. All which can be legally done will be performed by the Executive branch of the government to diminish, if it cannot remedy, the evil."<sup>21</sup> The authority to regulate medical boards and to extend invitations to appear before them had already been accorded.<sup>22</sup>

The failure of the secretary of the treasury to make a satisfactory arrangement for the supply of funds in the department had

<sup>19</sup>See General Orders, Nos. 37 and 41 in *Off. Recs.*, XXII, ii, 969, 991, and Smith to Davis, September 11, 1863, *ibid.*, 1004.

<sup>20</sup>General Orders, Nos. 35, August 3, 1863. *Off. Recs.*, XXII, ii, 953. See also Seddon to Davis, January 23, 1865, *idem.*, LIII, 1039-1040. Smith's delegation to the cotton bureau of general control over the purchase and exportation of cotton on government account resulted in vigorous protests from Major Simeon Hart, quartermaster, to whom the secretary of war had previously entrusted the same task. Seddon, however, refused to interfere and explained to Hart that the whole matter must rest in the hands of General Smith. *Off. Recs.*, LIII, 904-905, 908-909.

<sup>21</sup>Smith to Seddon, September 12, 1863, with endorsements. *Off. Recs.*, LIII, 895-896.

<sup>22</sup>Seddon to Smith, September 7, 1863. *Off. Recs.*, XXVI, ii, 213.

greatly hampered General Smith from the first and now caused him acute anxiety. No means were in sight for paying the troops or for providing for other needs of the army during the coming winter when a campaign against the federal forces was in prospect. After repeated appeals to Richmond, in one of which he threatened to attempt to raise a loan directly from the people, an arrangement was made by which he was to be supplied with funds by the re-stamping and reissuing of old notes at the depositories within his department.<sup>23</sup> Agents were appointed from Richmond to carry this plan into effect, but Smith was given no authority over them, and they were unable to afford adequate relief.

The net result, therefore, of General Smith's request for the grant of larger powers by the executive department was, first, an extension of authority over those bureaus of the war department hitherto not usually under the orders of commanders in the field, but directly under the secretary of war; and, second, the permission, grudgingly given, to make temporary assignment of officers to rank pending appointment and confirmation at Richmond. Over the operations of other cabinet departments no authority was definitely granted.

#### *4. Powers Authorized by the Confederate Congress*

The first Confederate Congress met in its fourth session, December 7, 1863, five months after the fall of Vicksburg. The extraordinary events which had transpired since its adjournment in May furnished numerous questions for its consideration, and one of them was the policy which it should adopt for the administration of the Trans-Mississippi Department.

In his official report for the year 1863,<sup>24</sup> the secretary of war explained the conditions in this department, due to its isolation, and urged that it would be judicious for "some extraordinary powers of military administration" to be entrusted to the general commanding, and that legislation should be enacted providing for the establishment there of separate offices under competent heads for the various cabinet departments, and of bureaus of the war de-

<sup>23</sup>Smith to Davis, September 28, 1863. *Off. Recs.*, XXII, ii, 1028; Seddon to Smith, October 10, 1863, *ibid.*, 1040.

<sup>24</sup>November 26, 1863. *Off. Recs.*, Series IV, Vol. II, 1016-1017.



partment under the commanding general analogous to those at Richmond.

The president's message summarized the conditions resulting from Federal control of the Mississippi, the difficulties encountered by the executive and the heads of departments in administering the Trans-Mississippi Department at that time, and the impossibility that officials east of the river should control operations west of it. He recommended that representatives of the post-office and treasury departments be placed west of the river with authority in the head of each department to vest in the assistant full power to operate the sub-department; while for military affairs, he advised that the president and secretary of war be authorized to "delegate to the commanding general so much of the discretionary power vested in them by law as the exigencies of the service shall require."<sup>25</sup>

Resolutions were at once adopted in each house looking toward the legislation recommended. On January 5, a bill entitled "An act to authorize the appointment of an Assistant Secretary of the Treasury west of the Mississippi" went to the senate from the house. This bill amended to read "agent" instead of "Assistant Secretary" became a law January 27. This act empowered the president by and with the advice and consent of the senate to appoint an agent of the treasury who should reside west of the Mississippi and discharge such duties as should be assigned him by the secretary of the treasury. The secretary could empower the agent to discharge any duty or function west of the river that the secretary himself could discharge. To make this branch office effective, other bills were passed in a short time providing for the establishment in this department of two bureaus of the treasury, the one of the auditor and the other of the comptroller. The chiefs of these bureaus were to receive and disburse all the public money for the department; to keep the necessary accounts; to file evidences of all claims against the government in this department, which hitherto had been required to be filed in the state department; to receive instructions from and to report all transactions to the agent of the treasury for the department.<sup>26</sup>

<sup>25</sup>December 7, 1863. *Off. Recs.*, Series IV, Vol. II, 1045-1046; also in Richardson, *Messages and Papers of the Confederacy*, I, 377-378.

<sup>26</sup>For the history of these bills see *Journal of the Confederate Con-*

On February 10, 1864, President Davis approved a bill authorizing the establishment of an agency of the postoffice department west of the Mississippi. This bill gave him the power, by and with the consent of the senate, to appoint a postoffice agent for and resident in this department. The postmaster general, or if necessary the president, was authorized to vest said agent with such power as would enable him to perform all duties that might be required of him to keep up the postal service in that part of the Confederacy. The bill further provided that funds for this branch of the postoffice should be deposited with the treasury agent there and should be transferred to the different postmasters by orders of the postmaster general; the funds so transferred were then to become subject to the postoffice agent for all liabilities. All acts of the agent were to be subject to revision by and to the approval of the postmaster general, the proper accounting officers of the treasury, and when necessary to the approval of the president.<sup>27</sup>

At the beginning of the session the committee on military affairs was instructed "to inquire into the expediency of organizing and strengthening the Trans-Mississippi Department by the appointment of an Assistant Secretary of War." On February 13, the committee at its own request was discharged from further consideration of the matter, probably because of Seddon's opposition to it. He explained that, even though it was intended to make such agent subordinate to the commanding general, he feared the name or title would cause embarrassment. He preferred to leave General Smith in supreme control west of the river, and to organize auxiliary bureaus there.<sup>28</sup> An act was passed on February 17, 1864, providing for the establishment of such bureaus or agencies of the war department west of the river as the public service might require and auxiliary to those established by law at Richmond. This act empowered the general commanding this department under the authority of the president, or the secretary of war, to direct these bureaus, to assign staff officers and clerks to duty

*gress*, Vols. III, IV, VI, VII, *passim*. For the laws, see *Statutes at Large of the Confederate States*, 1st. Cong., 4th Sess., pp. 176, 230.

<sup>27</sup>*Statutes at Large of C. S.*, 1st Cong., p. 184.

<sup>28</sup>*Journal of Congress of C. S.*, III, 453, 728; Seddon to Smith, June 15, 1864. *Off. Recs.*, XXXIV, iv., 672.

in them or to make appointments therein, subject to the approval of the president.<sup>29</sup>

Congress evidently intended that General Smith's control over the military administration in his department, though subordinate to the president and secretary of war, should be analogous to and as broad as that of his superiors. All later acts passed with reference to the military administration also reveal this intention. Only two such acts are shown here.

The president, February 15, 1864, approved an act to suspend the writ of habeas corpus in certain cases. This act declared the writ suspended, but that such suspension should apply only in cases of persons arrested or detained by order of the president, secretary of war, or the general commanding the Trans-Mississippi Department by the authority and under the control of the president. It further stated that during the time of suspension no military or other officer should be compelled to appear in court or to return the body of any person or persons in answer to any writ of habeas corpus held by him by order of the three named executive officials.<sup>30</sup> An act was passed February 17, 1864, authorizing the secretary of war or the general commanding the Trans-Mississippi Department to employ, or in case they could not do that, to impress free negroes and slaves to work on fortifications and perform other labor connected with the defense of the country.<sup>31</sup>

It is evident that Congress treated the Trans-Mississippi Department as a somewhat detached part of the Confederacy. Not only did it legalize the delegations of authority made by the president and secretary of war, but it extended the commander's powers in this field even beyond those granted by the executive officers. The department for all administrative purposes was repeatedly recognized as practically distinct from the Cis-Mississippi states. At any rate, the question of military administration was now settled though without prejudice to the president's superior authority.

Some interpretations by executive officers of the extent of the powers granted to General Smith are interesting and perhaps necessary in this connection. From a study of the bills referred

<sup>29</sup>*Statutes at Large of C. S.*, 202-203.

<sup>30</sup>*Statutes at Large of C. S.*, pp. 187-189.

<sup>31</sup>*Statutes at Large of C. S.*, p. 235.

to above and other sources, as has been shown, it does not seem that Congress considered granting any civil functions to the commander in the west. However, April 9, 1864, Davis explained to Governor Allen of Louisiana, with respect to the protection of citizens from unjust seizures by impressment officers, that General Smith had power to do everything in his department that he, Davis, could do. "He has power to execute the laws and that is the only authority I have."<sup>32</sup> In writing to General Smith con-

"As far as the constitution permits, full authority has been given you to administer to the wants of your department, civil as well as military."<sup>33</sup>

However, the context here does not make clear the exact meaning of the term "civil." In his annual report, dated April 28, 1864, Seddon said:

"The legislation of the late Congress for the Trans-Mississippi Department was both liberal and provident. Provision was made for the peculiar needs incident to its comparative isolation from the supervision of the central government, and all the agencies of a partially independent government were authorized. In the same spirit has been the action of the executive. Added rank and dignity have been bestowed on the able commander and administrator at its head, and to him have been entrusted the full measure of executive powers, which, under our constitutional system, could be exercised by others than the president."<sup>34</sup>

In another letter to Smith shortly afterwards the president declared that it had been his endeavor to extend the general's powers to the utmost limit consistent with law and the nature of the government; and that to meet the extraordinary circumstances in which the department was placed laws had been passed granting the commander fuller powers.<sup>35</sup> Seddon also wrote that he thought General Smith, besides his position as military commander of the department, should combine with his strictly military duties somewhat of the relation of the secretary of war to the department and the president.<sup>36</sup>

<sup>32</sup>Davis to Allen, April 9, 1864. *Off. Recs.*, LIII, 981-982.  
cerning the work of Congress, he said:

<sup>33</sup>April 28, 1864. *Off. Recs.*, LIII, 986.

<sup>34</sup>*Off. Recs.*, Series IV, Vol. III, 341.

<sup>35</sup>Davis to Smith, June 14, 1864. *Off. Recs.*, XXXIV, iv, 671.

<sup>36</sup>Seddon to Smith, June 15, 1864. *Off. Recs.*, XXXIX, iv, 672.

Communication with Richmond was uncertain; it was months after laws were passed by Congress before they were received west of the river. The commanding general received few letters from chief officials during the winters of 1863-64 and 1864-65. He was beset with many difficulties; he had no means; there were conflicting claims and conflicting authorities; and copies of the laws which would have helped him were not received until months after their enactment. Under these circumstances, he had found it necessary in 1863, when organizing the cotton bureau, to assume control over treasury agents in the department. In December, 1864, the question of his authority to do this came up in the house, and the president was requested to submit to that body copies of all instructions from the secretary of war to General Smith by which the latter claimed the right to assume control over agents of the treasury. The data was submitted January 25, 1865, but so far as can be determined no action was taken.<sup>37</sup>

In this matter of granting civil powers, then, it seems that the executive officers early realized the necessity that some such authority be given to the commander of the department, but were unwilling to commit themselves definitely; that Congress was silent on the question of the control by the general of the non-military agencies it established in the department; that the executive officers, after the meeting of Congress, were inclined to interpret the delegation of power as extending over the civil administration, but they saved themselves by artfully inserting the qualifying phrase "so far as the constitution permits"; and that when General Smith, under pressure of necessity, assumed some of those functions, the authorities at Richmond acquiesced.

*(Continued)*

<sup>37</sup>Journal of Cong. of C. S., VII, 403-404; also see Seddon to Davis, January 23, 1865. *Off. Recs.*, LIII, 1309.